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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,609	03/30/2004	Paul Re	H-US-01403CON	3229
50855 7590 09/13/2010 Tyco Healthcare Group LP d/b/a Covidien 555 Long Wharf Drive Mail Stop 8-N1, Legal Department New Haven, CT 06511				
EXAMINER				
BACHMAN, LINDSEY MICHELLE				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
09/13/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,609

Applicant(s)

RE ET AL.

Examiner

LINDSEY BACHMAN

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 9, 16, 17 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 9, 16, 17 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In view of the appeal brief filed on 28 June 2010, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/TODD E. MANAHAN/

Supervisory Patent Examiner, Art Unit 3734.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1, 3, 9, 20-22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray (US Patent 6,235,034) in view of Small et al. (US Patent 5,139,499).

Claim 1, 3, 9: Bray'034 discloses device having a body that has a generally annular frame (14; shown in Figure 5 and 6a and shape described at column 4, lines 40-42) supporting a solid shell-like cover (20). The device contains elongated leg structures (16) extending from the distal side of the body for placement in the bone. The legs (16) are thicker than the body and have a portion at the distal end of the legs that are enlarged beyond a periphery of the leg member (screw threading). The frame has a peripheral frame portion (33). The cover is integral with the frame (Figure 5) and bowed proximally (column 4, lines 48-50 and column 5, lines 29-31).

Bray'034 doesn't teach that the leg structures are generally conical or that the leg structures have a central channel that extends substantially the length of each leg.

Small'499 teaches providing a bone screw with a central channel (26) in order to engage with a delivery device (Figure 3). Small'499 also teaches that it is known to make the bone screw generally conical. It would have been obvious to one of ordinary skill in the art to modify the device of Bray'034 with the teachings of Small'499 so that it too has this advantage.

Claim 20: Bray'034 teaches a method of repairing an articular cartridge defect (column 2, lines 47-50 and column 1, lines 46-58) using a device that contains a body

(Figure 5, 6a) with elongated legs (16). The device contains a body having a circular frame portion (14; column 4, lines 40-42) and a solid, shell-like cover (20) fixed within the frame. The cover is bowed proximally (column 4, lines 48-50 and column 5, lines 29-31). Bray'034 teaches creating a hole in the bone for each leg and then placing the legs into the hole to place the bowed encapsulation body adjacent to the bone (column 6, lines 57-63). Bray'034 does not teach that the legs have a channel extending substantially the length of the legs.

Small'499 teaches providing a bone screw with a central channel (26) in order to engage with a delivery device (Figure 3). It would have been obvious to one of ordinary skill in the art to modify the method of Bray'034 with the teachings of Small'499 so that it too has this advantage.

Claim 21, 22: Bray'034 in view of Small'499 teach a channel, but do not teach a channel that is tapered. Small'499 teaches that the channel is shaped to engage with a deployment tool. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the shape of the channel on the object being deployed because Applicant has not disclosed that shaping the channel a particular way provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected both channels to perform equally as well with either shape, considering a deployment tool engagement portion is shaped the same as the channel.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray'034 in view of Small'499, as applied to Claim 1, further in view of Jobe (US Patent 5,634,926).

Bray'034 in view of Small'499 do not teach the use of a bioabsorbable material to make the device.

Jobe'926 teaches the use of a bioabsorbable material to make a similar device out of bioabsorbable materials (column 8, lines 46-62) so that they are absorbed by the body after a period of time. It would have been obvious to one of ordinary skill in the art to modify the device taught by Bray'034 in view of Small'499, by constructing it out of a bioabsorbable material, as taught by Jobe'926, so that it also has this advantage.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray'034 in view of Small'499, as applied to Claim 1, further in view of Michelson (US Patent 6,620,163).

Bray'034 in view of Small'499 do not teach the use of a cell growth material to make the device.

Michelson'163 teaches the use of a cell growth material on a similar device in order to promote bone growth (column 13, lines 64 to column 14, line 3). It would have been obvious to one of ordinary skill in the art to modify the device taught by Bray'034 in view of Small'499 with a cell growth material, as taught by Michelson'163, so that it also has the stated advantage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734

/TODD E. MANAHAN/
Supervisory Patent Examiner, Art Unit 3734